



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

BRINKS HOFER GILSON & LIONE / CME  
P.O. BOX 10395  
CHICAGO, IL 60610

**COPY MAILED**

**AUG 31 2006**

In re Application of  
Brady et al.  
Application No. 10/726,851  
Filed: December 2, 2003  
Attorney Docket No.  
03-971

**OFFICE OF PETITIONS**  
:  
:  
: ON PETITION  
:  
:  
:

This is a decision on the Petition Under 37 CFR 1.78(a)(3),  
filed August 5, 2005, to accept an unintentionally delayed claim  
under 35 U.S.C. § 120 for the benefit of prior filed  
nonprovisional application No. 10/685,907.

This Petition is hereby **dismissed**.

Applicable Law

A petition for acceptance of a claim for late priority under 37  
CFR 1.78(a)(3) is only applicable to those applications filed on  
or after November 29, 2000. Further, the petition is  
appropriate only after the expiration of the period specified in  
37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR  
1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37  
CFR 1.78(a)(2)(i) of the prior-filed  
application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the  
date the claim was due under 37 CFR 1.78(a)(2)(ii)  
and the date the claim was filed was unintentional.

The Director may require additional information  
where there is a question whether the delay was  
unintentional.

The instant petition does not comply with item (1) above.

As to (1), the amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).<sup>1</sup>


Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop PETITIONS  
                  Commissioner for Patents  
                  Post Office Box 1450  
                  Alexandria, VA 22313-1450

By hand:           Customer Service Window  
                  Mail Stop Petitions  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

By fax:           (571) 273-8300  
                  ATTN: Office of Petitions

Any questions concerning this matter may be directed to Attorney Derek L. Woods at (571) 272-3232.

  
Frances Hicks  
Lead Paralegal  
Office of Petitions

---

<sup>1</sup> The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).